



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

FCP/141857

PRELIMINARY RECITALS

Pursuant to a petition filed June 25, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on October 10, 2012, at Kenosha, Wisconsin.

The issues for determination are whether the agency correctly determined that Petitioner must meet a cost share and correctly calculated that amount of the cost share.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Kathy Tolnai

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner is a Family Care participant and has not had a cost share for that participation through May of 2012. Petitioner had been living in his own home and his special housing allowance was large enough to make Petitioner's cost share zero through May 2012. In May 2012 Petitioner lost his home and moved to an apartment.
3. Petitioner was notified that as of June 1, 2012 that he had a cost share of \$803.00 per month for his Family Care participation. With receipt of verification of housing costs, the agency

subsequently revised its calculations and notified Petitioner that the cost share for June 2012 would be \$411.97.

4. Petitioner receives Social Security disability income in the amount of \$1721.00 per month.
5. With his move to an apartment, Petitioner's rent is \$695 per month. He had a utility bill for May 2012 that was \$33.05. The agency determined that a full month's utility bills for Petitioner would be \$46.03 and credited him with that amount in the calculation of the special housing allowance. Petitioner was also credited with \$878.00 basic needs allowance as well as a \$40 personal disregard.
6. Petitioner is a parent but not the custodial parent.

DISCUSSION

People eligible for Family Care Medicaid fall into one of the following categories:

Group A eligibility

1. People 18 and over who meet full benefit EBD Medicaid financial and non-financial requirements and who are also functionally eligible for FC at either the nursing home or non-nursing home level of care.
2. People 18 and over who meet BC+ Standard Plan, Well Woman Medicaid, Medicaid through Adoption Assistance or Foster Care financial and non-financial requirements and who are functionally eligible for FC at either the nursing home or non-nursing home level of care.

Group B eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is at or below the special income limit (See the Community Waivers Special Income Limit in 39.4.1)

Group C eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is above the special income limit (see the Community Waivers Special Income Limit in 39.4.1), but whose allowable monthly expenses are sufficient to reduce their income to the medically needy limit (See EBD Medically Needy Limits in 39.4.1.)

Medicaid Eligibility Handbook (MEH), §29.3.1.

The elderly, blind and disabled (EBD) financial income limit is \$591.67 and the Community Waivers Special Income Limit is \$2094.00. *MEH, §39.4.1.* As Petitioner's gross income is \$1721.00, it is apparent that he falls into the group B category of Family Care eligibility.

Cost sharing is the monthly amount a waivers participant has to contribute toward the cost of his/her waiver services. *MEH, § 28.5.1.* Payment of the cost share is a condition of eligibility. *Id.*

Social Security benefits are countable as income. *See MEH, §15.4.4 and 10.* The allowable deductions are the personal maintenance allowance and, where the FCP member is the custodial parent, a family maintenance allowance. *MEH, §§28.8.3.1 and 28.8.3.2.* Petitioner is a parent but is not the custodial parent. The personal maintenance allowance is calculated as follows:

28.8.3.1 Personal Maintenance Allowance

The Personal Maintenance Allowance is an income deduction used primarily when calculating a cost share for a Group B waiver member. However, it is also used in the cost share calculation of a Group C waiver member when completing Section C of the Spousal Impoverishment Income Allocation Worksheet (18.6.4).

The personal maintenance allowance (Line 6 and Page 2 of the worksheet) is for room, board, and personal expenses. It is the total of:

1. Community Waivers Basic Needs Allowance (See 39.4.2 EBD Deductions and Allowances)
2. \$65 and ½ earned income deduction (See 15.7.5 \$65 and ½ Earned Income Deduction).
3. Special housing amount. This is an amount of the person's income set aside to help pay housing costs. If the waiver applicant's housing costs are over \$350, add together the following costs:
 - a. Rent.
 - b. Home or renters insurance.
 - c. Mortgage.
 - d. Property tax (including special assessments).
 - e. Utilities (heat, water, sewer, electricity).
 - f. "Room" amount for members in a Community Based Residential Facility (CBRF), Residential Care Apartment Complex (RCAC) or an Adult Family/Foster Allowance.) Home (AFH). The case manager determines and provides this amount.

The total, minus \$350, equals the special housing amount. The person can set this amount aside from his/her income.

...

MEH, §28.8.3.1.

Here Petitioner was credited with the basic needs allowance of \$878 as well as a special housing amount of \$391.03 (rent of \$695 + utility of \$46.03 = \$741.03 - \$350 = \$391.03). The determination of the utility allowance is not well documented but based on the available \$33.05 bill paid by Petitioner on May 29, 2012 is not unreasonable. He was also given a personal needs allowance of \$40. Subtracting these deductions from his income yields the cost share of \$411.97 per month (\$1721- \$878 - \$391.03 - \$40).

Petitioner maintains that it is not fair to ignore other expenses, e. g., he has car expenses and dietary needs that he believes should be deductible, thus contends that the Division of Hearings and Appeals should order a lower cost share. The Division of Hearings and Appeals must, however, limit its review to the law set forth in statutes, federal regulations, administrative code provisions and program policies in accord with these laws. Accordingly, the Division of Hearings and Appeals does not have authority under law to create new deduction categories as requested by Petitioner.

I again note that there is a family maintenance allowance and if Petitioner's custodial situation changes he should notify the agency. Finally, two additional utility bills were submitted by Petitioner for the hearing; one for June 2012 that was \$99.57 and one for September 2012 that was \$84.66. While these suggest a higher utility average than the \$46.03 determined by the agency in determining the June 2012 cost share; utility bills for July and August were not submitted so it is not possible to create an average. Again, the agency should be provided with all of these bills so that it can average them to determine the effect on cost share.

CONCLUSIONS OF LAW

That the evidence indicates that Petitioner's cost share of \$ 411.97 for June 2012 was correctly calculated.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

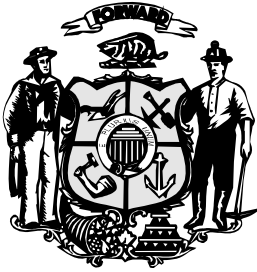
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of January, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 4, 2013.

Kenosha County Human Service Department
Office of Family Care Expansion